



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

KENNETH G. HIBBITT,
Plaintiff,

vs.

SAMUEL B. GLOVER, Director of the South
Carolina Department of Probation, Parole, and
Pardon Services,
Defendant.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 3:06-591-HFF-JRM

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE

This is a civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Plaintiff's motion to amend and to certify a class be denied and Defendant's motion for summary judgment be granted. The Report is made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on January 16, 2007, and the Clerk entered Plaintiff's objections on January 30, 2007. The Court has considered Plaintiff's objection memorandum, but finds the objections contained therein to be without merit.

The Magistrate Judge recommends that Plaintiff's motion to amend be denied because Plaintiff has not submitted a copy of his proposed amended complaint and because Plaintiff has not shown that he served Defendant with a copy of his motion or proposed amended complaint. Further, the Magistrate Judge recommends that Plaintiff's motion to certify class be denied because Plaintiff lacks standing to assert the claims of other inmates.

Plaintiff argues that he relied on the Court to serve Defendant and that he delivered the amended complaint to prison authorities on March 29, 2006. However, it appears from Plaintiff's motion to amend that he wishes to amend the complaint only to file the action as a class action, bringing the same claims in the original complaint on behalf of himself and others. Because Plaintiff lacks standing to assert the claims of other inmates, *Oxendine v. Williams*, 509 F.2d 1405 (4th Cir. 1975), the Court will deny Plaintiff's motion to amend and motion to certify class.

The Magistrate Judge also recommends that Defendant's motion for summary judgment be granted. Plaintiff's objections recite arguments made in his response to Defendant's motion for summary judgment. In an abundance of caution, however, the Court has reviewed the issues raised de novo. Nevertheless, because the Court agrees with the analysis of the Magistrate Judge, the Court will not address each issue a second time.

Accordingly, after a thorough review of the Report, the objections, and the record in this case pursuant to the standard set forth above, the Court overrules Plaintiff's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that Plaintiff's motion to

amend and to certify class be **DENIED** and Defendant's motion for summary judgment be **GRANTED**.

IT IS SO ORDERED.

Signed this 22nd day of March, 2007, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.